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Attorneys for Plaintiff HarperCollins Publishers L.L.C.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HARPERCOLLINS PUBLISHERS L.L.C.,	:
	:
Plaintiffs,	: Case No.10 CIV 8782
	:
— against —	: DECLARATION OF
	: <u>CHRISTOPHER L. GOFF</u>
GAWKER MEDIA LLC,	:
	:
Defendant.	:
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I, **CHRISTOPHER L. GOFF** declare as follows:

1. I am an attorney duly admitted to practice law in the State of New York. I am the Senior Vice-President and General Counsel of plaintiff HarperCollins Publishers L.L.C. (“HarperCollins”). I submit this declaration in support of HarperCollins’ application for a temporary restraining order and for a preliminary injunction.

2. HarperCollins has not made a prior application for the relief requested.

My Background

3. I graduated from the University of Virginia in 1974 with a Bachelor of Arts in English Literature. Thereafter, I attended Harvard University School of Law, from which I

graduated *cum laude* in 1978.

4. I have been a lawyer for publishing clients since 1980, when I worked as an associate at the law firm now known as Satterlee Stephens Burke & Burke LLP performing legal work on publishing matters. I then worked at *Reader's Digest* as counsel from 1983 to 1986. In 1986, I left *Reader's Digest* to work at Doubleday & Co., Inc. book publishers. I worked as in-house counsel at Doubleday from 1986 to 1989. During those years, I had responsibility for all legal affairs for Dell, a Doubleday subsidiary that published mass-market paperback books.

5. In 1989, I became Associate General Counsel at Harper & Row Publishers. Harper & Row became HarperCollins in 1990. I have been at HarperCollins since that time, ultimately becoming Senior Vice-President and General Counsel in 2005. Throughout my career at HarperCollins, I have been responsible for legal matters related to the publication and distribution of hundreds of books.

The Book

6. HarperCollins is scheduled to release the book *America by Heart* by Governor Sarah Palin (the "Book") on November 23, 2010. The Book, written by the former Alaska Governor and former Republican Vice-Presidential candidate, is a memoir and a personal reflection by Governor Palin on American history, culture, and current affairs. In *America by Heart*, Governor Palin reflects on the key values that have been part of her own life and that continue to inform her vision of America's future. Governor Palin's thoughts as reflected in *America by Heart* have never before been published. A copy of the Book is submitted herewith as Exhibit A.

7. HarperCollins has the exclusive rights to publish, reproduce, and distribute the Book in all languages throughout the world, including the right to publish it electronically.

8. HarperCollins filed a preregistration application for *America by Heart* with the United States Copyright Office on November 19, 2010 and paid all fees associated with the registration. A copy of the registration receipt is annexed hereto as Exhibit B.

9. Preregistration with the United States Copyright Office has been completed for the Book under the number PRE 000004046. A copy of the Preregistration Notice is annexed hereto as Exhibit C.

10. Because of Palin's status as a well-known politician, author of the best-selling book *Going Rogue*, and political commentator, HarperCollins anticipates that the Book will be a national bestseller and, consequently, a commercial success for HarperCollins. For this reason, HarperCollins has put extensive plans in place to promote the Book.

11. For example, the Book is strictly embargoed until the release date of November 23, 2010. That means that HarperCollins has released only limited review copies of the Book to the media in advance of the publication of the Book and, to extent that HarperCollins has released any such copies, it has done so on the condition that no member of the media can publish a review of the book or any material from the Book before November 23, 2010. In addition, all members of the media who have received an advance copy of the Book have signed a nondisclosure agreement prohibiting them from disclosing the Book's contents until November 23. It also means that the Book is not available for sale to the general public until November 23, 2010. Copies of the Book were shipped in boxes marked "Do Not Open" until November 23, 2010 and pursuant to industry custom and practice, HarperCollins relies on booksellers not to open the boxes until then.

12. Embargoing a book adds to the excitement surrounding its publication and maximizes the impact it has on the purchasing public. It allows HarperCollins to control the

media rollout surrounding the publication of the Book, which can begin no earlier than the publication date. It also allows HarperCollins to control the distribution of the particularly newsworthy or interesting excerpts or portions of the Book. In that manner, HarperCollins and the Book's author control the manner in which the story contained in the Book unfolds.

13. In addition, HarperCollins has planned an extensive publicity campaign for the Book including radio, television and print interviews with Governor Palin.

Gawker's Unauthorized Publication of the Book

14. On or about November 17, 2010, I became aware that 21 full and exact pages of the Book were published on the website Gawker, available at the URL <http://www.gawker.com>. Gawker is a weblog that describes itself as "dish[ing] the nation's most current and cutting gossip across media, entertainment, technology, and business." The Gawker posting that contained the pages of the Book was given the title "Sarah Palin's New Book: Leaked Excerpts" (the "Item") and contained little to no commentary by Gawker. The pages of the Book were easily viewable and readable by a casual web visitor. A true and accurate print out of the Item is attached hereto as Exhibit D.

15. I noticed that on the same Gawker web page as the Item, Gawker had sold advertising to third parties.

16. On November 17, 2010, I sent Maureen O'Connor of Gawker Media LLC, the publisher of Gawker, a letter demanding that Gawker immediately remove the Book's contents from the Item and desist from making further unauthorized publication of the Book. A true and accurate copy of my letter to Ms. O'Conner is attached hereto as Exhibit E.

17. Gawker continues to publish the Item containing the unauthorized publication of portions of the Book.

Irreparable Harm

18. Gawker's unlawful publication of the Book has caused HarperCollins, as the exclusive licensee of the copyright in the Book, irreparable harm. In publishing portions of *America by Heart* before HarperCollins was able to do so, Gawker broke the embargo and unlawfully usurped the benefits of first publication that lawfully belong to HarperCollins.

19. Specifically, Gawker's unauthorized publication of certain portions of the Book has irreparably damaged HarperCollins' ability to control the manner in which Governor Palin's message is distributed. For example, the Book, which is dedicated to Governor Palin's youngest child, Trig, contains Governor Palin's thoughts about Trig's birth and her reaction to learning while still pregnant with Trig that he had Downs Syndrome. Some, but not all, of these passages are included in the Item. As a result, it is Gawker, and not HarperCollins, who has been able to determine the manner in which Governor Palin's highly personal reflections first reach the American public. The same can be said for the other portions of the Book unlawfully published by Gawker that relate to Governor Palin's reflections on her daughter, Bristol, Bristol's unplanned pregnancy, and Bristol's former fiancé.

20. In addition, Gawker's unauthorized publication of the Book harms the marketability of the Book because it provides the book-buying public with a free look at the contents of the Book, days before publication. A buyer whose curiosity is satisfied by viewing the Gawker Item can decide that he or she need not buy the book as a result of Gawker's publication.

21. Indeed, Gawker is available twenty-four hours a day. Readers can access

Gawker's infringing publication of the Item anytime they like. This directly impacts HarperCollins ability to market and sell an electronic version of the Book.

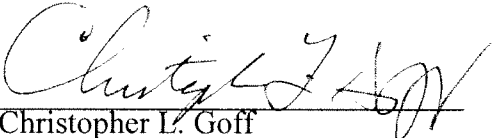
22. Finally, Gawker's unlawful publication of the Book harms HarperCollins' ability to control the publicity surrounding the Book. HarperCollins embargoed the Book so that articles and discussions in the media about the Book would all occur on the same day, November 23, and would be about the Book as a whole, not just portions of the Book. Because of Gawker's publication of the Book, however, media outlets are free to discuss excerpts of the Book (not selected by HarperCollins) before November 23. This is a serious harm to HarperCollins' plans to market the Book.

23. The irreparable harm to HarperCollins will continue after the official publication of the Book. Gawker's unauthorized publication of the Book will potentially continue to cause book buyers to choose not to buy the Book in favor of reading the portions published on Gawker. This is the very harm the Copyright Act was designed to prevent.

24. These harms to HarperCollins cannot be compensated by monetary damages.

25. For all these reasons, HarperCollins has been and will continue to be irreparably harmed by the continued unlawful publication of the Book by Gawker and HarperCollins respectfully requests that this Court issue a temporary restraining order and preliminary injunction restraining Gawker Media LLC, and all of its affiliates, employees, and agents from any future unauthorized use of the Book.

I declare under penalty of perjury under the laws of the United States of America and the States of New York that the foregoing is true and correct and that this declaration was executed on November 19, 2010.


Christopher L. Goff